IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1633 OF 2005

Mohamed Fahim Abdul Aziz Ansari ... Applicant.

V/s

State of Maharashtra ...Respondent.

Shri Prosper D'Souza for the applicant.
Shri A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 29th March, 2005.

P.C.:

1. I have heard the learned Counsel appearing for the applicant and the learned APP for the State.

2. Applicant was convicted by the Metropolitan Magistrate by order dated 19/10/2004. By the said order, the Trial Court after recording the plea of the applicant in which he pleaded guilty for having committed an offence, convicted him for an offence punishable under sections 457 and 380 of the Indian Penal Code and sentenced him to suffer R.I. for one year and to pay fine of Rs 500/- and, in default, to suffer S.I. for two months. Against the said judgment and order, the applicant preferred a Criminal Appeal being Criminal Appeal No.405 of 2004 in the Sessions Court. The Sessions Court had directed the applicant to prefer a Revision Application as the appeal was not maintainable. Applicant had filed an

application for converting the Criminal Appeal into Criminal Revision Application on 21/2/2005. It appears that this fact was not brought to the notice of the Sessions Judge. The Sessions Judge, therefore, dismissed the Criminal Appeal filed by the applicant on the ground that it is not maintainable. Applicant has filed this Criminal Application challenging the judgment and order passed by the Metropolitan Magistrate and the Sessions Court.

3. The learned Counsel appearing on behalf of the applicant has relied upon number of judgments of this Court and the Supreme Court in which it is held that a duty is cast on the Court to inform the accused that he has a right to be represented by an advocate from the free Legal Aid Panel if he himself is not in a position to engage an advocate. It is further submitted that the Magistrate while recording the plea of the accused - applicant herein did not ascertain whether the applicant was made aware of the plea and whether it was translated in the language known to the applicant.

4. In my view, this Criminal Application can be disposed of by directing the Sessions Court to convert the Criminal Appeal No.405 of 2004 into a Criminal

Revision Application on the basis of the application filed by the applicant on 21/2/2005 and, thereafter, decide the Criminal Revision Application after taking into consideration all legal and factual submissions made by the applicant or his counsel.

5. Accordingly, the Order passed by the Sessions Judge in Criminal Appeal No. 405 of 2004 is set aside. The matter is remanded back to the Sessions Court. Sessions Court to convert the Criminal Appeal No. 405 of 2004 into a Criminal Revision Application in view of the application made by the applicant on 21/2/2005 and, thereafter, decide the Criminal Revision Application on merits and in accordance with law.

6. Criminal Application No.1633 of 2005 is allowed in the above terms.

V.M. KANADE, J.